

# SUPREME COURT OF ARKANSAS

No. CR08-926

BILLY JOE KELLEY,

APPELLANT,

VS.

STATE OF ARKANSAS,

APPELLEE,

Opinion Delivered December 4, 2008

APPEAL FROM THE PULASKI  
COUNTY, CIRCUIT COURT,  
NO. CR07-1169, HON. WILLARD  
PROCTOR, JUDGE.

REBRIEFING ORDERED.

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## PER CURIAM

APPEAL & ERROR—NONCOMPLIANCE WITH RULE 4-2—REBRIEFING ORDERED.— Instead of abstracting the transcript of the testimony as required by Arkansas Supreme Court Rule 4-2(a)(5), appellant provided a verbatim transcript of the testimony, and the abstract was not in the first person; because appellant failed to comply with Rule 4-2, he was ordered to abstract the testimony and to file a substituted brief.

*William P. Luppen*, for appellant.

No response.

Appellant Billy Joe Kelley appeals his conviction for rape and sentence of life imprisonment. Because Kelley has submitted a brief without a proper abstract, which is in violation of Arkansas Supreme Court Rule 4-2 (2008), we order rebriefing.

Rule 4-2(b)(3) explains the procedure to be followed when an appellant has failed to supply this court with a sufficient brief and states, in pertinent part:

Whether or not the appellee has called attention to deficiencies in the appellant's abstract or Addendum, the Court may address the question at any time. If the Court finds the abstract or Addendum to be deficient such that the

Court cannot reach the merits of the case, or such as to cause an unreasonable or unjust delay in the disposition of the appeal, the Court will notify the appellant that he or she will be afforded an opportunity to cure any deficiencies, and has fifteen days within which to file a substituted abstract, Addendum, and brief, at his or her own expense, to conform to Rule 4-2(a)(5) and (8). Mere modifications of the original brief by the appellant, as by interlineation, will not be accepted by the Clerk. Upon the filing of such a substituted brief by the appellant, the appellee will be afforded an opportunity to revise or supplement the brief, at the expense of the appellant or the appellant's counsel, as the Court may direct.

Rule 4-2(a)(5) provides, in pertinent part: "In the abstracting of testimony, the first person (i.e., "I") rather than the third person (i.e., "He, She") shall be used."

In the present case, a jury trial was held February 5-6, 2008. Instead of abstracting the transcript of the testimony as required by Rule 4-2(a)(5), Kelley provides a verbatim transcript of the testimony, and the abstract is not in the first person. Because Kelley has failed to comply with our rule, we order Kelley to abstract the testimony and to file a substituted brief within fifteen days from the date of entry of this order.

Rebriefing ordered.